

**IN THE MATTER OF PROCEEDINGS UNDER THE DISCIPLINARY REGULATIONS
OF THE FOOTBALL ASSOCIATION**

**BEFORE A REGULATORY COMMISSION (THE RT HON SIR GARY
HICKINBOTTOM, GARETH FARRELLY AND ELAHE YOUSANI)**

BETWEEN

THE FOOTBALL ASSOCIATION

-and-

RODRIGO BENTANCUR

**REASONED DECISION
OF THE REGULATORY COMMISSION**

Introduction

1. The Football Association (“The FA”) is the national governing body for football in England.
2. Rodrigo Bentancur (“the Player”) is a professional footballer with Tottenham Hotspur Football Club (“THFC”). He is a “Participant” in the game of football as defined in paragraph A2 of the FA Rules, and is consequently subject to both those Rules and the FA Disciplinary Regulations. In this Decision, references to particular Rules are to the FA Rules, unless otherwise appears.
3. This Regulatory Commission was appointed to determine a charge of misconduct brought by The FA against the Player that, in breach of Rule E3.1, he acted in an improper manner and/or used abusive and/or insulting words and/or brought the game into disrepute during an interview with a journalist in or around June 2024;

and, if the charge is found proven, to impose an appropriate sanction. It is said in the charge that the misconduct amounted to an “aggravated breach” as defined in Rule E3.2, because it included a reference, whether express or implied, to nationality and/or race and/or ethnic origin.

The Facts

4. The facts are not substantially in dispute.
5. In about June 2024, the Player was interviewed at his home by a well-known Uruguayan journalist, Rafa Cotelo (“Mr Cotelo”), who was accompanied by an assistant and a cameraman. His interview with the Player was apparently part of a series of interviews he was conducting with high profile Uruguayan footballers which were turned into films uploaded onto the internet by Mr Cotelo through a number of vehicles including his own YouTube channel and Instagram page. Mr Cotelo has a significant following on social media, with 245,000 Instagram followers and 12,800 subscribers to his YouTube channel. Each of the previous films in the series had attracted 108,000 to 230,000 views on YouTube. At the time of the statement in support of the charge (the statement of [REDACTED] dated August 2024), the Player’s interview film had been viewed 67,213 times on YouTube.
6. Mr Cotelo and his team were at the Player’s house for 3-4 hours, and also saw the Player the day before when he was the Player’s guest for THFC’s match against Nottingham Forest FC. The film eventually posted by Mr Cotelo was about 45 minutes long.
7. We have had the opportunity of seeing the whole film resulting from the interview with the Player. The interview was in Spanish. It was informal, casual and generally light-hearted. At the relevant part of the interview, when the alleged

misconduct occurred, the Player was holding his young daughter in his arms and she was putting a scrolled up football shirt to his face.

8. The only part of the interview to which the charge relates is the following translated exchange, which appears to have concerned a request by Mr Cotelo to see one of the football shirts that the Player had at his home:

Mr Cotelo: Your shirt... well, what about the Korean's shirt?

The Player: Sonny?

Mr Cotelo: Or a champion.

The Player: Or one of Sonny's cousins as they all look more or less the same".

The Player, who was smiling throughout much of the interview, laughed after he made the last comment.

9. The Player says, and we accept, that Mr Cotelo's second comment interrupted the Player, who said his two comments should be read together: "Sonny? Or one of Sonny's cousins as they all look more or less the same". The reference to "Sonny" was to Heung-Min Son ("Sonny" being his popular nickname), the Player's team colleague at THFC, who is South Korean and who plays for South Korea at full international level.
10. The interview resulted in a film that was posted on Mr Cotelo's YouTube channel, which included the above exchange which was also posted by Mr Cotelo on Instagram. It appears to have been heavily re-posted. The evidence – which we accept – was that (i) the Player had no editorial control, or any control over the content of the film, as Mr Cotelo published it, and (ii) the Player did not himself post (or re-post) any part of the interview on any social media or in any other form.
11. When the film was posted by Mr Cotelo, the Player was on international duty with Uruguay at the Copa America. He was told of its posting by THFC's Media Team,

apparently on the day it was first posted; and the Player responded the following day by making an “apology” – the word he uses in paragraph 20 of his statement – which he says, he wrote himself, without any consultation with THFC or anyone else. He wrote it, he says, “from the heart”. It said:

“Sony brother! I apologise to you for what happened, it was just a very bad joke! You know what I love you and I would never disrespect you or hurt you or anyone else! I love you brother! @hm_son7.”

12. The Player said that he then apologised to Heung-Min Son personally, before he wrote “a longer apology” (as the Player puts it) on his Instagram account the following week, as follows:

“I would like to communicate to all fans and everyone who follows us that after my interview where I referred to Son and no one else, I have spoken to him and, logically given our deep friendship, he understands it was only an unfortunate misunderstanding. All has been clarified and solved with my friend. If someone felt offended because of my words through this media tool I would like to offer my sincere apologies. But I would also like you to know that never, never I referred to anyone else. Only to Son and for that reason I’ve never had the intention to offend directly or indirectly anyone. A big hug and all my respect to anyone.”

13. On or before 20 June 2024, Heung-Min Son posted a statement on his Instagram page:

“I’ve spoken with Lolo [i.e. the Player]. He made a mistake. He knows this and has apologised.

Lolo would not mean to ever intentionally say something offensive. We are brothers and nothing has changed at all.

We’re past this, we’re united, and we will be back together in pre-season to fight for our club as one.”

The message was signed off “Sonny”, with a white heart emoji.

14. On 20 June 2024, THFC re-posted that statement on its official Instagram page, with the following comment:

“Following a comment from Rodrigo Bentancur in an interview video clip and the player’s subsequent apology, the club has been providing

assistance in ensuring a positive outcome on this matter. This will include further education for all players in line with our diversity, equality and inclusion objectives. We fully support that our captain Sonny feels that he can draw a line under the incident and that the team can focus on the new season ahead. We are extremely proud of our diverse, global franchise and playing squads. Discrimination of any kind has no place at our club, within our game, or wider society.”

15. On 25 September 2024, Heung-Min Son was asked about the apology, and his response was widely reported. The Player relies on the report from “The Independent”, which records Heung-Min Son as saying:

“At the moment because the FA process I can’t say much about it. But I love Rodrigo, I love him. We’ve lots of good memories, we started playing together when he joined (in January 2022). He knew. He apologised straight afterwards when he had holiday. I was at home. I didn’t even realise what was going on. He sent me a long message and you could feel it was coming from his heart. When we came back for pre-season, he felt sorry and he almost cried when he apologised publicly and personally as well. He felt like he as really sorry. We are all human and all make mistakes and we learn from it.

I love Rodrigo. I love him, I love him. He knows he made a mistake but I’ve no problem at all with him. We move on as a team-mate and friend, as a brother. We move on together.”

16. Whilst referring (and often condemning) the Player’s comment that “... they all look more or less the same...”, prior to any charge being brought against the Player, none of the news and social media coverage we have seen made any reference to Mr Cotelo’s immediately preceding reference to “the Korean”. It is submitted on behalf of the Player – and we accept – that there was none; and the press coverage has continued largely not to report that earlier remark when reporting on this matter.
17. The news media reports indicate that “Kick It Out” (a discrimination reporting service for football) received “a significant number” of complaints about the Player’s comments as reported in the news and social media.

The Relevant Rules

18. The charge is brought under Rule E3.1 and E3.2, which provide as follows:

E3.1 A Participant shall at all times act in the best interests of the game and shall not act in any manner which is improper or brings the game into disrepute or use any one, or any combination of, violent conduct, serious foul play, threatening, abusive, indecent or insulting words or behaviour.

E3.2 A breach of Rule E3.1 is an “Aggravated Breach” where it includes a reference whether express or implied, to any one or more of the following: ethnic origin, colour, race, nationality, religion or belief, gender, gender assignment, sexual orientation or disability.

19. The burden of proving a breach falls on The FA on the balance of probabilities.
20. An FA Appeal Board helpfully considered the approach to Rule E3 cases in John Yems, stressing that the relevant tests are objective. It said:

“59. The correct approach to such cases is not controversial. The test for breach of Rule E3.1 is objective. The question is simply whether the words and/or behaviour are objectively abusive or insulting. This is a matter for the Regulatory Commission to decide, having regard to all the relevant facts and circumstances of the case. It is not necessary to prove that the alleged offender subjectively intended his words or behaviour to be threatening, abusive, indecent or insulting.

60. Further, in respect of an ‘Aggravated Breach’ contrary to Rule E3.2 it is a question of fact whether a breach of Rule E3.1 includes a reference to a protected characteristic. That too is to be answered objectively and no question of subjective intention arises.

61. When determining liability in a case involving an ‘Aggravated Breach’ the Regulatory Commission (or indeed Appeal Board) is not required to determine whether the Participant is or is not, for example, a racist. It is not uncommon for Commissions to express such an opinion. It is not required to do so. Nor often will it be well placed to do so as it would require Commissions to engage in an exercise of assessing and judging an individual's personal beliefs or prejudices. Further, to do so risks leading the Commission into serious error, in respect of the correct approach to liability or sanction or both. Instead of expressing such views, Commissions must at the liability stage focus solely on whether, assessed objectively, each of the ingredients of the Rule E3.2 breach is proved so as to establish liability...”.

21. Later, the Appeal Board confirmed that all that needs to be factually decided as to liability on an aggravated breach charge under Rules E3.1 and E3.2 is:

- a. What was said and/or the behaviour displayed;
- b. Whether that which was said and/or the behaviour displayed was objectively (one or more of) violent conduct, serious foul play, threatening, abusive, indecent or insulting; and if it was

c. Objectively did the words and/or behaviour include a reference to any one or more of the protected characteristics (ethnic origin, colour, race, nationality, religion or belief, gender, gender reassignment, sexual orientation or disability).”

22. The Appeal Board considered that subjective intent, irrelevant to liability for breach, may be relevant to the culpability of the individual for the proved misconduct for the purposes of sanction (paragraph 81). As an example, the Appeal Board said that, where a person commits a Rule E3.2 breach with clear hostile, racist intent, that person’s culpability will be greater than an isolated comment made by a person from different linguistic and cultural background who is oblivious to the objective meaning of such a comment in British society (paragraph 80).
23. It appeared to be common ground before us that the approach in John Yems with regard to liability for breach, and the possible relevance of subjective intent to sanction, was correct. We respectfully agree, and shall adopt it in this case.
24. Where a Regulatory Commission finds a misconduct breach proved, then it may impose a sanction taking into account Appendix 1 to Part A of the Disciplinary Regulations (Standard Sanctions and Guidelines for Aggravated Breaches). Where an Aggravated Breach is found, it is required to apply the sanction guidelines for such breaches in that Appendix.
25. In respect of an Aggravated Breach, the Appendix provides as follows (so far as relevant):

“Sanction Range

A finding of an Aggravated Breach against a Player... will attract an immediate suspension of between 6 Matches and 12 Matches (**“Sanction Range”**). A Regulatory Commission shall take all aggravating and mitigating factors into account, including but not limited to those listed in these guidelines when determining the level of sanction within the Sanction Range. The lowest end of the Sanction Range (i.e. 6 Matches) shall operate as a standard minimum punishment (the **“Standard Minimum”**).... A Regulatory Commission may impose an immediate suspension in excess of 12 Matches in

circumstances where aggravating factors of significant number or weight are present.

Exceptions to the Standard Minimum

A Regulatory Commission may only consider imposing a suspension below the Standard Minimum where the following specific (and exhaustive) circumstances arise such that the Regulatory Commission determines that the Standard Minimum would be excessive:

Where the offence was committed in writing only or via the use of any communication device **and**:

- Where the Regulatory Commission is satisfied that there was no genuine intent on the part of the Participant Charged to be discriminatory or offensive in any way and could not reasonably have known that any such offence would be caused; or
- The age of the Participant at time of the offence (e.g. where the Participant was a minor at the time the offence was committed); or
- The age of the offence (e.g. a social media post made a considerable time ago).

For the avoidance of doubt, the existence of the circumstances above will not necessarily result in a departure from the Standard Minimum. A Regulatory Commission must be satisfied that the unique circumstances and facts of a particular case are of such significance that a departure from the Standard Minimum is justified to avoid an unjust outcome for the Participant Charged. In reaching a decision, the Regulatory Commission must also consider whether or not it is in the best interests of the game in tackling all forms of discrimination to depart from the Standard Minimum. In any event, a Regulatory Commission shall impose a suspension of no less than 3 Matches.”

26. Under the heading, “Factors to be Considered when Determining Sanction”. It is said:

“A Regulatory Commission will have due regard to the circumstances and seriousness of the incident when determining the appropriate sanction and whether (and to what extent) to depart from the Sanction Range or when setting an appropriate time-based suspension. For the avoidance of doubt, any departure from the Sanction Range below the Standard Minimum may only be considered by a Regulatory Commission where the specific (and exhaustive) circumstances listed above arise. In so doing, the Regulatory Commission shall give consideration to any aggravating and mitigating factors...”.

There are then set out, in non-exhaustive lists, “Aggravating factors” and “Mitigating factors”.

27. Where a Commission find an Aggravated Breach proved, then Appendix 1 requires the individual committing it to be made subject to an education programme, the details of which will be provided by the FA.

The Proceedings

28. A Request for Observations was sent to the Player on 26 June 2024, when the Player was still at the Copa America. On his return, THFC submitted Observations on his behalf on 19 August 2024. A formal Charge Letter was sent to the Player on 11 September 2024. He responded by denying the charge.
29. Sir Gary Hickinbottom was appointed as Chair of this Regulatory Commission on 5 November 2024. Gareth Farrelly and Elahe Youshani were appointed as the other members of the Commission the following day. All members of the Commission are independent of The FA, and were appointed by the independent Chair of the FA Judicial Panel.
30. The Player asked for the matter to be dealt with on the basis of written submissions only, and the Commission consequently dispensed with an oral hearing and dealt with the matter under paragraph 29 of the Disciplinary Regulations: Part B (Non-Fast Track Regulations).
31. The Commission met on 12 November 2024 to consider the charge on the basis of the written submissions and accompanying documents as follows:
- (i) The Charge Letter.
 - (ii) Statement of [REDACTED] FA Integrity Investigator, dated August 2024 with the following exhibits:
 - [REDACTED]/1: Video clip of the alleged misconduct.

■■■■/2: English translation of ■■■■/1.

■■■■/3: English version of Observations Request Letter.

■■■■/4: Spanish version of Observations Request Letter.

■■■■/5: The Player's Observations (submitted on 19 August 2024 by Rebecca Caplehorn, the Director of Football Administration & Governance, THFC ("Ms Caplehorn").

■■■■/6: Screenshot of Mr Coteló's Instagram page.

■■■■/7: Screenshot of Mr Coteló's YouTube channel.

■■■■/9: Screenshot of first statement/apology uploaded by the Player to his Instagram account.

■■■■/10: Screenshot of second statement/apology uploaded by the Player to his Instagram account.

■■■■/11: Screenshot of statement published on Heung-Min Son's Instagram account.

■■■■/13: Extended interview video.

(iii) The Player's Reply Form.

(iv) The Player's Submissions in Response to the Charge.

(v) The Player's statement dated 27 September 2024.

(vi) Ms Caplehorn's statement dated 26 September 2024.

(vi) Press articles reporting the alleged misconduct, provided by the Player.

(vii) The FA's Response to the Player's Submissions.

(viii) The Player's Reply to The FA's Response.

We were also provided with two earlier Decisions: The FA v Dele Alli (Reasoned Decision of FA Regulatory Commission, 9 June 2020) ("Dele Alli"), and The FA v John Yems (Reasoned Decision of FA Appeal Board, 13 April 2023) ("John Yems").

32. The Decision of the Commission was issued confidentially to the parties later on 12 November 2024. These are the Written Reasons for that Decision. Both the Decision and the Reasons are unanimous.

Breach: The Parties' Positions

33. The FA submitted that this case is straightforward. Answering the questions posed in John Yems, in order, it submitted as follows.

- (i) What was said by the Player is not in dispute: he said, "Sonny?... Or one of Sonny's cousins as they all look more or less the same", before laughing.
- (ii) There can be no doubt that those words are objectively insulting and/or abusive. Whilst, of course, context is important – and this part of the conversation began with Mr Cotelo referring to "the Korean", an unfortunate and inappropriate way to refer to Heung-Min Son – to respond the way the Player did, in the words he used and laughter, is (it is submitted) "clearly to be universally regarded as highly offensive and insulting and/or abusive". Although the media had not reported Mr Cotelo's earlier use of the term "the Korean", it is submitted that, in his apologies, the suggestion that the Player was apologising, not for what he said (which is portrayed by the Player as a sarcastic and gentle rebuke of Mr Cotelo for his use of the term "the Korean" rather than any offensive words he himself had used), but for the inadequate reporting on the interview which excluded Mr Cotelo's reference to "the Korean", does not survive examination in the light of the other available

evidence. But, even if it were an attempt at confronting Mr Cotelo's inappropriate term with sarcasm and gentle rebuke, what the Player said was in any event objectively insulting and/or abusive, and thus in breach.

(iii) The words used by the Player obviously included reference to the protected characteristics of nationality and/or race and/or ethnic origin, i.e. it suggested a stereotypical and offensive generalisation that all people who share one or more of those characteristics with Heung-Min Son "look more or less the same".

34. In its submissions, as indicated in John Yems, The FA stressed that intention is not a factor to be considered in the determination of liability for the breach, nor is it necessary to prove that the Player is a racist. However, The FA expressly made clear that it made no assertion that the Player is a racist, only that the words he used in the circumstances he used them, when objectively considered, amounted to an Aggravated Breach under Rules E3.1 and E3.2.

35. The Player denied the misconduct charge; and, if his use of those words were found to constitute misconduct under Rule E3.1, then he denied it is an Aggravated Breach under Rule E3.2.

36. His evidence and submissions identified the following main, intertwined strands of defence.

(i) It was submitted that much of the public criticism of the Player's remarks "appears to have come in blissful ignorance of a vital remark made by the journalist... that is vitally important to set the exchange in context" (paragraph 5 of his Written Submissions). The words used by the Player were in response to Mr Cotelo's "regrettable" and inappropriate reference to his colleague and friend, Heung-Min Son, as "the Korean". The Player was

“surprised and uncomfortable” by Mr Coteló’s use of that term to refer to Heung-Min Son (paragraph 12 of his statement”). As his Observations in response to the charge (sent by THFC on his behalf) said:

“Rodrigo’s reply was sarcastic and a gentle rebuke for the journalist calling Sonny ‘The Korean’. Rodrigo does not believe that all Korean’s ‘look more or less the same’. The context of the exchange clearly shows Rodrigo is being sarcastic.

It was Mr Coteló who described Sonny as ‘The Korean’. In the context of the conversation, it was obvious that Mr Coteló was referring to Sonny as ‘The Korean’, and Rodrigo was challenging the journalist in his description of his Club team-mate.”

It was submitted that that response by the Player was appropriate for the casual and private circumstances in which they were speaking. The words he used “were intended to be a light-hearted and jocular manner of chiding the journalist [Mr Coteló] for his use of a generalisation that was wholly inappropriate”, i.e. his reference to Heung-Min Son as “the Korean” in circumstances in which the journalist well-knew Heung-Min Son’s name because he used it in another part of the interview conducted at a different time (paragraph 53 of his Written Submissions, and the Player’s Observations). The remarks were intended to “gently challenge” Mr Coteló – they were “a gentle rebuke” (paragraphs 14-15 of the Player’s statement). It was submitted that the Player’s remarks could only be objectively offensive if Mr Coteló’s use of the term “the Korean” is ignored. That, it was said, was a complete answer to the alleged breach.

- (ii) It was submitted that, in his apologies, the Player was apologising, not for what he said, but for the inadequate reporting on the interview which excluded Mr Coteló’s reference to “the Korean”.
- (iii) The conversation was in the privacy of the Player’s own home, and he had “a reasonable expectation of privacy and – moreover – a reasonable

expectation that the journalist would show more common sense in what he posted” (paragraph 52 of his Written Submissions, repeated in paragraph 11). The Player had no editorial control over what was posted from the interview. He expressed surprise – indeed, horror – that Mr Cotelo chose to publish these remarks at all, let alone on Instagram or YouTube, particularly as, without reference to Mr Cotelo’s remark, the words appeared to have been made gratuitously (paragraph 18 of his Written Submissions, and paragraphs 18, 22 and 25 of his statement). He noted that the remarks were at some stage excised from the full interview before it was further broadcast on Uruguayan television, he assumed by or at the request of Mr Cotelo (paragraph 19 of his Written Submissions and paragraph 24 of his statement).

- (iv) The words used by the Player were a “jocular generalisation” which, in all the circumstances, did not cross the line into misconduct (paragraph 42 of his Written Submissions).

Breach: Discussion and Conclusion

- 37. It is our firm conclusion that the breach under Rules E3.1 and E3.2, as alleged, is proved.
- 38. Even on the basis of the Player’s evidence and submissions, we consider the Player’s conduct in using the words he did, in the full context in which they were used, was clearly abusive and insulting, and would amount to misconduct. The Player appears to accept that by saying, “Sonny? Or one of Sonny’s cousins as they all look more or less the same”, he meant to refer to a generalised characterisation of the nationality and/or race and/or ethnic origin of Heung-Min Son, albeit with best of intentions. But, even if the Player intended those words to be a “sarcastic and gentle rebuke” to Mr Cotelo for referring to Heung-Min Son as

“the Korean” as he did, to respond in those terms would be objectively regarded as insulting and/or abusive and highly offensive. We agree with The FA’s submission: it would clearly be universally regarded as such (paragraph 22 of its Written Submissions).

39. In coming to that conclusion, we have considered primarily the ordinary and usual meaning of the words themselves and their immediate context, including the manner in which they were delivered (in the context of the interview as whole, as reflected in the film). Just by reference to those criteria, we consider that the Player’s remarks were clearly objectively insulting and abusive.

40. However, that conclusion is supported by the following, other evidence.

(i) The reaction of the Player himself, when the film was brought to his attention. His first apology, drafted without consultation with THFC or any other adviser and posted the day after the film had been brought to his attention, explained it as “just a very bad joke” (although in his statement, he said that “sarcastic” would have been a better word than “joke”). That suggests that the Player himself realised what he had said was offensive, and was anxious to correct it as soon as possible. His second apology equally appears to have acknowledged that his remarks had been objectively offensive, which is why he apologised for offence caused. We deal specifically with the Player’s explanation of his apologies below (paragraph 41); but, on their face, in these apologies (particularly the first), the Player appears to realise and accept that his remarks were objectively insulting and/or abusive and this offensive, and apologise for the offence he has caused to Heung-Min Son and those who share his characteristics of nationality and/or race and/or ethnic origin.

(ii) The statement made by THFC in response to the apologies (see paragraph 14 above). That appears to have accepted that the Player’s remarks had

been objectively insulting and/or abusive and discriminatory, hence its implementation of “further education for all players in line with our diversity, equality and inclusion objectives” and its confirmation that “discrimination of any kind has no place at our club, within our game, or wider society”.

- (iii) The statements made by Heung-Min Son (see paragraphs 13 and 15 above). These again appear to be premised on the Player’s remarks having been objectively offensive, and regarded by both Heung-Min Son and the Player himself as such. For example, Heung-Min Son is reported as saying:

“I’ve spoken with Lolo. He made a mistake. He knows this and has apologised.” (Instagram post);

and

“He knew. He apologised straight afterwards when he had holiday.... We are all human and all make mistakes and we learn from it.”

- (iv) The news and media reports and the complaints made to Kick It Out. Whilst we appreciate the Player’s point that, unlike those referred to above, people who just read the news and social media may well not have known that the remarks were made just after Mr Cotelo referred to Heung-Min Son as “the Korean” – and therefore do not give this factor any significant weight – it is noteworthy that there appears to have been a widely held view that the Player’s remarks were objectively offensive.

41. It was submitted on behalf of the Player that the apologies he made were not for what he said – which, as we have described, he maintained was a sarcastic and gently rebuking response to Mr Cotelo’s reference to “the Korean” – but for the inadequate reporting of the interview by excluding any mention of Mr Cotelo’s use of that term. However, we cannot accept that submission, which flies in the face of the evidence. It does not sit with the content or form of the Player’s apologies

or the response of THFC or Heung-Min Son. Indeed, looking objectively at the Player's first apology (see paragraph 11 above), we are firmly of the view (and find as a fact) that, contrary to the core submissions eventually made to us on the Player's behalf, when viewed objectively and in context, it was a genuine and heart-felt apology by the Player, before he had consulted THFC or anyone else, that recognised that his words were objectively offensive and wished to make clear his regret for the offence caused, notably to Heung-Min Son, his team colleague and friend. As such, these apologies do not assist the Player at all on the question of liability for breach, as was submitted on his behalf; but they (and particularly the first apology) do provide powerful mitigation, to which we return when we consider sanction (paragraphs 45 and following below).

42. Nor were we impressed by the further submission made on the Player's behalf that what he said to Mr Coteló was said in private, and he had "a reasonable expectation of privacy and – moreover – a reasonable expectation that the journalist would show more common sense in what he posted" (see paragraph 36(iii) above). Mr Coteló is a well-known journalist who was working on a series of internet films on high profile Uruguayan footballers. He attended the Player's home with a film crew. He was there, in a professional capacity, for over four hours. The Player could have been in no doubt that the interview would be turned into a film that would be put onto the internet, and attract considerable attention there. We accept that he retained no editorial control over the interview; but that was all the more reason for caution in what he said, given that Mr Coteló was free to publish anything said to him in the interview. We do not accept that the Player could reasonably have been surprised at the publication of anything that he said in the course of the interview, including the remarks at the heart of this charge. If the Player had wanted specifically to exclude something he had said in the interview from being published, he could have said so to Mr Coteló: there is no

evidence that he sought to do so in respect of the remarks he made which are at the heart of these proceedings. In any event, the Player's misconduct was what he said to Mr Cotelo in the interview, not the publication of that by Mr Cotelo which goes to sanction not liability. We briefly return to this issue when we deal with sanction (paragraphs 47(ii) and 48(iv) below). It has no relevance to liability for breach.

43. For those reasons, we find the breach of Rule E3.1 made good.
44. As will be obvious from the above, the misconduct by the Player included making remarks which included implied (but clear) reference to nationality and/or race and/or ethnic origin. Indeed, that reference was at the centre of what was said. Consequently, the breach was an Aggravated Breach as defined in Rule E3.2.

Sanction

45. As we have found an Aggravated Breach against the Player proved, we are required to apply the sanctions guidelines set out Appendix 1 to Part A of the Disciplinary Regulations (see paragraphs 24-25 above). That requires an immediate suspension of 6-12 matches, six matches being the "Standard Minimum" punishment. Whilst the Written Submissions for the Player vaguely suggest that a sanction of less than six matches might or should be imposed here, no exception to that minimum arguably applies. A Regulatory Commission can only consider a sanction of less than six matches when various mandatory conditions apply, one being "where the offence was committed in writing only or via the use of any communication device". The offence here was committed when the Player spoke his remarks to Mr Cotelo and his crew: they were neither in writing nor made via the use of any communication device.

46. In assessing where, within the guidelines range, this case falls we are required to take into account all aggravating and mitigating factors, including those specifically listed in Appendix 1. We have taken all the factors relied upon by each party into account, and particularly the following.
47. In terms of aggravating factors:
- (i) The Player is a high profile international footballer playing in the Premier League.
 - (ii) The remarks were made in an interview with a well-known journalist with large internet followings both on his YouTube channel and on Instagram. It was reasonably foreseeable that the remarks would be widely distributed via posts and re-posts on the internet, as they were.
48. In terms of mitigating factors: for the reasons we have given, the Player had no legitimate expectation of privacy when making his remarks. However:
- (i) The Player not only has no previous offences of any kind, there is no evidence before us of him ever having engaged in racist or otherwise discriminatory conduct inside or outside football.
 - (ii) Whilst this was an absence of aggravation rather than positive mitigation, we accept there was no pre-meditation, nor did the Player intend his comments to cause offence to his friend, Heung-Min Son, or to anyone else.
 - (iii) The Player initially showed remorse and took responsibility for his actions and offered full and (we have no doubt) sincere apologies. In our view, that was greatly to his credit. It was not to his credit that, thereafter, he elected to deny the charge on grounds which, on their face, undermined that initial, commendable reaction. However, despite the submissions made on his

behalf before us which tended to undermine the force of that early apology, we consider his remorse was and is genuine.

- (iv) Whilst the Player ought reasonably to have foreseen substantial publicity for any comments he made to Mr Cotelo, the Player did not himself post or re-post them.

49. In all the circumstances, we consider that, in terms of culpability and consequences, this breach falls towards the lower end of the guideline range but not the lowest point. Cases can easily be envisaged which are less serious than this, but nevertheless subject to the minimum suspension of six matches.

50. In our view, the appropriate sanction is (i) a suspension of seven matches, (ii) a financial penalty commensurate with the available financial information, and (iii) a mandatory education programme (see paragraph 27 above).

Conclusion

51. For the above reasons, we imposed the following sanction on the Player. The Player is:

- (i) from 12 November 2024, suspended from all domestic club football (Category 1) until THFC has completed seven First team Competitive Matches (Category 1) in approved competitions; and
- (ii) fined the sum of £100,000; and
- (iii) ordered to attend a mandatory face-to-face education programme the details of which will be provided to him by The FA, that programme to be completed by 11 March 2025. If the Player fails to complete the programme satisfactorily in that period, he will be immediately suspended from all

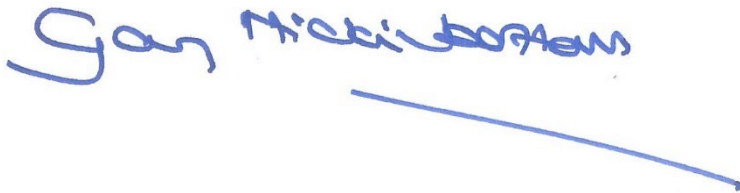
domestic club football until such time as the mandatory programme is completed.

We make no order as to costs.

52. We consider that that sanction, when looked at as a whole, is in all the circumstances reasonable and proportionate to the breach we have found proved.

53. This Decision may be appealed by either party to an Appeal Board in accordance with Part C of the Disciplinary Regulations: Appeals Non-Fast Track (paragraph 40 of that Part C).

Dated 14 November 2024



**The Rt Hon Sir Gary Hickinbottom
Chair
For the Regulatory Commission**